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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,159

07/14/2008

Egill Thor Ragnarsson

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06/07/2011

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
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EXAMINER

KUMAR, KALYANA VENKA K

ART UNIT

PAPER NUMBER

3653

MAIL DATE

DELIVERY MODE

06/07/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,159	Applicant(s) RAGNARSSON, EGILL THOR	
	Examiner KALYANA VENKATESHWAR KUMAR	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-9 rejected under 35 U.S.C. 103(a) as being unpatentable over **Sjoberg (USP 4,723,660)** in view of **Magnusson et al (USP 6,321,914 B1)**.

3. Regarding claim 1 and 3-5, Sjoberg discloses a grading apparatus for grading objects items of seafood with respect to their size, comprising a plurality of juxtaposed endless conveyor belts (see Fig. 18), each belt including an unloading end and a loading end, adjacent belts forming a width therebetween, wherein the width separating adjacent conveyor belts is larger at the unloading end than at the loading end of the belts (see Fig. 18), each conveyor belt having a cross-section with sloping sides such that in between each adjacent pair of belts is formed a sorting channel with substantially continuous sloping sides (see Fig. 17), wherein each belt comprises a plurality of hinged segments forming said substantially continuous sloping sides, each of said hinged segments has an open cleft between the sloping sides of each segment (see Fig. 16, near element 8), but Sjoberg does not explicitly disclose a sorting channel with substantially continuous sloping sides, each side being at an angle with respect to the axis of the belt in the range of about 70-85°. Magnusson teaches as obvious

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adjustability of the sloping angle $5-7^{\circ}$ (col. 3, lines 22-35, the sloping angle of $5-7^{\circ}$ would encompass the range of $85-83^{\circ}$). The claim would have been obvious because the technique for improving a particular class of devices was part of the ordinary capabilities of a person of ordinary skill in the art, in view of the teaching of the technique for improvement in other situations. In the present case, it would have been obvious to include adjustability in the ridge belt in order to grade different types of objections.

4. Regarding claim 2, Sjoberg discloses each belt is a continuous elastic belt (see Fig. 4).

5. Regarding claim 6, Sjoberg discloses said cleft has a width in the range of about 3-10 mm (see Fig. 16 and 18 and col. 4, lines 54+ where the width is adjustable with respect to the continued length of the conveyor and is adjusted to the needed width to grade different sized articles).

6. Regarding claim 7, Sjoberg/Magnusson discloses guiding means arranged by the loading end of the conveyor belts for guiding items of seafood to be graded to the channels in between adjacent belts and away from ridges and/or clefts on top of said hinged segments (see Fig. 2).

7. Regarding claim 8, Sjoberg discloses the use of an apparatus of any of claims 1-7 for the size grading of items (col. 1, lines 13-25). Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02. Here, the apparatus is capable of size grading items.

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8. Regarding claim 9, Sjoberg discloses the items are selected from the group consisting of peeled or unpeeled shrimp tails, lobster tails, fish including capelin, sardine, herring, mackerel, horse mackerel, menhaden, anchovy, blue whiting, ocean perch, cod, pollock, haddock, oysters, clams and mussels (col. 1, lines 13-25). Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02. Here, the apparatus is capable of grade fish products.

Response to Arguments

9. Applicant's arguments filed 3/17/2011 have been fully considered but they are not persuasive.

10. **Regarding Rejection under 35 USC 112**

11. Regarding the 35 USC 112 rejection of claims 1-9, the rejection has been withdrawn due to Applicant's amendment.

12. **Regarding Rejection under 35 USC 103**

13. Regarding Applicant's argument," By contrast, each hinged segment of the present invention has an open cleft (3) on the ridge, separating the two sloping sides of each segment when the hinged segment (1) is mounted on the rails and is operational (Figs. 1 and 2(b)). The advantage of the open cleft of the hinged segment of the present invention is to make rinsing of the belt more simple and accessible, as well as allowing

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decreased height of the side wall. Another advantage of providing an open cleft at the top of the ridge of each segment is that the segment will be more flexible as compared to the rigid closed structure of the prior art belts, which reduces stress in the segments during bending providing a longer commercial life for the belt segments,” the Examiner disagrees. The Examiner asserts the prior art reference shows an open cleft between the sloping sides of each segment (see Fig. 16, sloping sides 12 and near element 8). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an open cleft *at the top of the ridge of each segment*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

14. Regarding Applicant's argument, “The Magnusson patent does not disclose the angles of sloping sides of the belt segments or the sorting channels, but the angle of inclination of the belt along ‘the direction of movement’ of the belt,” the Examiner disagrees. The Examiner asserts that the Magnusson patent is used to teach varying the angle of belt to specific angles as being obvious to grade different objects.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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16. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kalyan Kumar whose telephone number is 571-272-8102. The examiner can normally be reached on Mon-Fri 7:00AM-3:30PM.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stefanos Karmis can be reached on 571-272-6744. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kalyan Kumar

Examiner

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/JOSEPH C RODRIGUEZ/

Primary Examiner, Art Unit 3653